

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5389 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SHAILENDRAKUMAR NATHALAL THAKOR

Versus

UNION OF INDIA

Appearance:

MR P. UPADHYAYA for MR HK RATHOD for Petitioner
MR JS YADAV for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE A.M.KAPADIA

Date of decision: 13/09/1999

ORAL JUDGEMENT (Per B.C. Patel, J.):

1. Rule. Mr. J.S. Yadav, learned advocate waives service of Rule on behalf of the respondents. At the request of the learned advocates for the parties, the matter is taken up today for final disposal.

2. On 12.11.1998, Review Application No.41 of 1998

in Original Application No.17 of 1992 came to be dismissed. The Tribunal found that the applicant was guilty of delay and laches and, therefore, dismissed the Original Application. From the order it transpires that the O.A. was preferred by the applicant wherein Mr. R.K. Mishra, learned advocate was appearing as his Advocate. As there was delay, Miscellaneous Application for condonation of delay was filed on 15.6.1998 by learned advocate Mr. Handa for the applicant-petitioner. It appears that the Registry of the Tribunal did not place the said application before the Tribunal. After going through the record it appears that Mr. Handa has in fact failed to remain present on the date on which application was dismissed. Mr. Mishra neither retired as an advocate nor bothered to remain present. In the Review Application it was stated that Mr. Handa has been engaged in addition to Mr. Mishra.

Before the Tribunal case was adjourned to 17.6.1998 and on that day as Mr. Mishra, learned advocate who filed the O.A. was not present, hence it was adjourned to 22.6.1998. From the record it transpires that on 22.6.1998 neither Mr. Mishra nor Mr. Handa remained present before the Tribunal. In the application filed by Mr. Handa for condonation of delay was not placed before the Tribunal immediately as there were objections. It was numbered as M.A.No.349 of 1998 after the objections were removed and was placed before the Tribunal on 19.8.1998 after the O.A. was dismissed on 22.6.1998.

It appears that Mr. Handa did not remain present as his name was not shown on the board and obviously so because he did not file his appearance in O.A. Mr. Mishra whose Vakalatnama was filed did not bother to appear before the Tribunal either on 17.6.1998 or on 22.6.1998. It was the duty of the learned advocate to appear before the Tribunal in the matter where he has filed his appearance. Mr. Handa obviously was not having notice about the O.A. as his name was not notified because he had filed no Vakalatnama in O.A.

It appears that for negligence of lawyer the matter came to be disposed of on merits. In a matter like this, looking to the facts and circumstances of the case, we would say that litigant should not suffer for the negligence of his lawyer. Under these circumstances, we allow this petition and quash and set aside the order dated 12.11.1998 passed by the Tribunal in Review Application No.41 of 1998.

The applicant has also challenged the order passed by he

Tribunal whereby O.A. was rejected. The said order dated 22.6.1998 is produced at Annexure 'A' page 10. As we have indicated earlier that learned advocate Mr. Mishra appearing in the matter did not remain present before the Tribunal. We have taken the view that for the negligence of the learned advocate, the applicant should not suffer. In the facts and peculiar circumstances of the case, the order dated 22.6.1998 passed in O.A. No.17 of 1992 is also quashed and set aside. The Tribunal shall hear the matter, namely, Misc. Application and if the delay is condoned shall dispose of the O.A. on merits. Accordingly, Rule is made absolute. No order as to costs.

(karan)